

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Brian Smith,

Complainant,
vs.

ORDER OF DISMISSAL

Angela Ewanika,

Respondent.

On March 30, 2009, Brian Smith filed a Complaint with the Office of Administrative Hearings alleging that Angela Ewanika violated Minnesota Statutes § 211B.07 in the recent March 2009 Burlington Township election. The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on March 30, 2009, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail to the Respondent on March 30, 2009.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state a *prima facie* violation of Minnesota Statutes § 211B.07. Therefore, the Complaint is dismissed.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Brian Smith against Angela Ewanika is DISMISSED.

Dated: April 1st, 2009

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

MEMORANDUM

Brian Smith ran successfully for Burlington Township Supervisor in the March 17, 2009 township election. He alleges in his Complaint that on March 16, 2009, Angela Ewanika, the Burlington Township Clerk and the head election judge, spoke by telephone to a resident named Betty Hoff about voting by absentee ballot. According to the Complaint, during the course of their conversation, Ms. Ewanika told Ms. Hoff not to vote for Mr. Smith because “he was only telling half the story.” The Complaint also alleges that the mother-in-law of his opponent sat at an “election table” in the polling place on election day while the Complainant voted. The unidentified mother-in-law was herself the incumbent candidate for Township Treasurer.

The Complaint alleges that by telling the resident not to vote for Brian Smith, Ms. Ewanika violated Minn. Stat. § 211B.07. This statute provides as follows:

211B.07 Undue influence on voters prohibited.

A person may not directly or indirectly use or threaten force, coercion, violence, restraint, damage, harm, loss, including loss of employment or economic reprisal, undue influence, or temporal or spiritual injury against an individual to compel the individual to vote for or against a candidate or ballot question. Abduction, duress, or fraud may not be used to obstruct or prevent the free exercise of the right to vote of a voter at a primary or election, or compel a voter to vote at a primary or election. Violation of this section is a gross misdemeanor.

In order to allege a *prima facie* violation of Minn. Stat. § 211B.07, the Complainant must put forward facts that would support finding that Ms. Ewanika used or threatened force, coercion, violence, harm, undue influence, etc. to “compel” a person to vote for him or another candidate. The Merriam Webster Dictionary defines “compel” to mean “to drive or urge forcefully or irresistibly;” or “to cause to do or occur by overwhelming pressure.”¹ The Complainant has failed to allege sufficient facts to support finding that the Respondent used or threatened force or undue influence to *compel* Betty Hoff to vote against him. The Complainant alleges only that the Respondent told Ms. Hoff not to vote for him. While this behavior, if true, is inappropriate, it is insufficient to support a *prima facie* violation of Minn. Stat. § 211B.07 absent some evidence that the

¹ Merriam Webster Online Dictionary.

Respondent used or threatened force, coercion, violence, undue influence, etc. to compel persons to vote against him.

The allegation of inappropriate behavior on the part of the Complainant's opponent's mother-in-law is likewise insufficient to support finding a violation of law. The Complainant has failed to name this person on the complaint form,² and has failed to identify which statute he believes was violated. As a result, the Complaint is insufficiently plead and must be dismissed.³ Moreover, the Complaint's description of the offending behavior is so vague, the Administrative Law Judge is unable to discern what exactly the Complainant is alleging occurred on election day.

If the Complainant is alleging that the mother-in-law of his opponent was acting in some official capacity at the polling place on election day when she herself was a candidate for township treasurer, this may support a violation of Minnesota Statutes Chapter 204B. However, such an allegation would be outside the jurisdiction of the Administrative Law Judge, which is limited to alleged violations of Minnesota Statutes Chapters 211A and 211B.⁴ If the Complainant is alleging that this person attempted to intimidate him while he voted, the allegation is insufficient to support finding a *prima facie* violation of Minn. Stat. § 211B.07.

Because the Complaint fails to sufficiently allege a *prima facie* violation of Minn. Stat. § 211B.07 or any other provision of Chapter 211B, it is dismissed in its entirety.

S.M.M.

² The election results printed in the *Frazee-Vergas Forum* newspaper indicate that this person is a Linda Olson.

³ See Minn. Stat. § 211B.32, subd. 3.

⁴ Alleged misconduct involving election judges falls within the jurisdiction of the Minnesota Secretary of State's Office. See Minn. Stat. §§ 204B.19 and 204B.26.